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**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

PATRICIA CLAIRE BANKSTON,  
  
Plaintiff,  
  
v.

PATENAUDE & FELIX, A  
PROFESSIONAL CORPORATION, a  
California corporation, and RAYMOND  
ALCIDE PATENAUDE, individually and in  
his official capacity,  
  
Defendants.

Case No. C07-03396-JW-PVT

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT**

Date: January 14, 2008  
Time: 9:00 a.m.  
Judge: Honorable James Ware  
Courtroom: Courtroom 8, 4th Floor  
Place: 280 South First Street  
San Jose, California

COMES NOW the Plaintiff, PATRICIA CLAIRE BANKSTON, by and through her attorney  
Fred W. Schwinn of the Consumer Law Center, Inc., and hereby submits her Memorandum of Points  
and Authorities in Support of Motion for Summary Judgment filed herein.

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## I. INTRODUCTION

This case was brought by PATRICIA CLAIRE BANKSTON (hereinafter “Plaintiff”) against a debt collection agency, PATENAUDE & FELIX, A PROFESSIONAL CORPORATION, and RAYMOND ALCIDE PATENAUDE, an individual who operates and manages the collection agency (hereinafter collectively referred to as “Defendants”). The Plaintiff alleges various violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, *et seq.* (hereinafter “FDCPA”), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices. Plaintiff seeks statutory damages, attorney fees and costs under the FDCPA.

This case arises out of the initial debt collection letter that was sent to Plaintiff by Defendants. The debt being collected stemmed from a disputed credit card account issued by Capital One Bank that was used for personal, family or household purposes. Plaintiff alleges that Defendants failed to send Plaintiff a written notice containing a statement that if Plaintiff notifies Defendants *in writing* within the thirty day period that the debt, or any portion thereof, is disputed, Defendants would obtain verification of the debt and that a copy of the verification would be mailed to Plaintiff. Plaintiff alleges that Defendants failed to send Plaintiff a written notice containing a statement that upon Plaintiff’s *written request*, Defendants would provide Plaintiff with the name and address of the original creditor if different from the current creditor. Plaintiff also alleges that the initial debt collection letter violates the FDCPA by misrepresenting Plaintiff’s right to obtain a copy of the debt verification or judgment against her. Finally, Plaintiff alleges that the collection letter misrepresented Plaintiff’s right to obtain the name and address of the original creditor, if it is different than the current creditor.

Plaintiff hereby moves for summary judgment on her claims for violation of 15 U.S.C. §§ 1692e, 1692e(10), 1692g(a)(4) and 1692g(a)(5).

## II. PROCEDURAL HISTORY

On June 28, 2007, Plaintiff filed a Complaint in this action against Defendants.<sup>1</sup> Thereafter,

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<sup>1</sup> Doc. 1.

Defendants filed their Answer on July 25, 2007.<sup>2</sup> On October 12, 2007, Plaintiff propounded Requests for Admission to Defendant, Patenaude & Felix, A Professional Corporation.<sup>3</sup> On November 12, 2007, Defendant served its responses to Plaintiff's Requests for Admission<sup>4</sup>.

On December 10, 2007, Plaintiff's Motion for Summary Judgment was filed herein. This Memorandum of Points and Authorities is submitted in support thereof.

### III. FACTS OF THE CASE

Plaintiff, Patricia Claire Bankston, is a "consumer" within the meaning of 15 U.S.C. § 1692(a)(3).<sup>5</sup> Defendant, Patenaude & Felix, A Professional Corporation, is a California corporation engaged in the business of collecting consumer debts.<sup>6</sup> Defendant, Raymond Alcide Patenaude, is a "debt collector" as defined by 15 U.S.C. § 1692a(6).<sup>7</sup>

On a date or dates unknown to Plaintiff, Plaintiff incurred a financial obligation, namely a credit account issued by Capital One Bank.<sup>8</sup> The debt was incurred primarily for personal, family or household purposes and is therefore a "debt" as that term is defined by 15 U.S.C. § 1692a(5).<sup>9</sup> Sometime thereafter, the debt was sold, assigned or otherwise transferred to Defendants for

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<sup>2</sup> Doc. 5.

<sup>3</sup> Doc. 13; Declaration of Fred Schwinn in Support of Motion for Summary Judgment ¶ 3 and Exhibit "2."

<sup>4</sup> Declaration of Fred Schwinn in Support of Motion for Summary Judgment ¶ 4 and Exhibit "3."

<sup>5</sup> Complaint (Doc. 1) ¶¶ 6 and 18; Answer (Doc. 5) ¶¶ 6 and 18; Exhibits "2" and "3", Admission No. 1.

<sup>6</sup> Complaint (Doc. 1) ¶¶ 7 and 19; Answer (Doc. 5) ¶¶ 7 and 19; Exhibits "2" and "3", Admission Nos. 2, 3 and 4.

<sup>7</sup> Complaint (Doc. 1) ¶¶ 8 and 20; Answer (Doc. 5) ¶¶ 8 and 20.

<sup>8</sup> Complaint (Doc. 1) ¶ 10; Answer (Doc. 5) ¶ 10.

<sup>9</sup> Declaration of Patricia Claire Bankston in Support of Motion for Summary Judgment (hereinafter "Plaintiff's Declaration") ¶ 4; Exhibits "2" and "3", Admission No. 5.





suit under governing law will . . . preclude summary judgment.”<sup>16</sup> When the record taken as a whole would not persuade a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.<sup>17</sup> In some cases, the evidence of the opposing party is so weak as to “fail[] to raise a material issue of fact.”<sup>18</sup>

The movant must carry this burden of “identifying those parts of the record that indicate the absence of a genuine issue of material fact.”<sup>19</sup> Once this burden is met, the non-movant is required to “come forward with specific facts showing that there is a genuine issue for trial” as to elements essential to the non-movant’s claim.<sup>20</sup> The non-movant must show more than “some metaphysical doubt as to the material facts;”<sup>21</sup> he or she must “set forth specific facts showing that there is a genuine issue for trial.”<sup>22</sup>

The Court must resolve all disputed facts and weigh all evidence “in the light most favorable to the nonmoving party.”<sup>23</sup> However, the nonmoving party may not rely upon mere allegations or denials contained in its pleadings or briefs, but must come forward with specific facts showing the presence of a genuine issue for trial.<sup>24</sup> As noted above, the requirement that a “genuine” issue of fact must be present has been interpreted to mean that the evidence is such that a reasonable trier of fact

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<sup>16</sup> *Id.* at 248.

<sup>17</sup> *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).

<sup>18</sup> *EEOC v. Farmer Bros. Co.*, 31 F.3d 891, 906 (9<sup>th</sup> Cir. 1994).

<sup>19</sup> *Brinson v. Linda Rose Joint Venture*, 53 F.3d 1044, 1048 (9<sup>th</sup> Cir. 1995).

<sup>20</sup> *Schneider v. TRW, Inc.*, 938 F.3d 986, 991 (9<sup>th</sup> Cir. 1990).

<sup>21</sup> *Matsushita Elec. Indus. Co.*, 475 U.S. at 586

<sup>22</sup> Fed. R. Civ. P. 56(e).

<sup>23</sup> *T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Ass’n*, 809 F.2d 626, 630-31 (9<sup>th</sup> Cir. 1987).

<sup>24</sup> *Rieber v. Kovelman (In re Kovelman)*, 1995 U.S. App. LEXIS 8487 at \*2 (9<sup>th</sup> Cir. 1995).

could return a verdict for the nonmoving party.<sup>25</sup> Summary judgment is more than a “disfavored procedural shortcut,” it is an important procedure “designed to ‘secure the just, speedy and inexpensive determination of every action.’ Fed. R. Civ. P. 1.”<sup>26</sup> One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and the rule should be interpreted in a way that allows it to accomplish this purpose.<sup>27</sup>

## V. SUMMARY OF ARGUMENT

- A. The “Least Sophisticated Consumer” Standard Is Used to Analyze Violations of the FDCPA.
- B. Under the Strict Liability Standard of the FDCPA, Plaintiff Has Pled Numerous Violations of the Act, as Seen from the Perspective of the “Least Sophisticated Consumer.”
- C. Defendants’ Debt Collection Letter Violates 15 U.S.C. § 1692g(a)(4).
- D. Defendants’ Debt Collection Letter Violates 15 U.S.C. §1692g(a)(5).
- E. Defendants Misrepresented Plaintiff’s Right to Obtain a Copy of the Debt Verification or Judgment Against Her, in Violation of 15 U.S.C. §§ 1692e and 1692e(10).
- F. Defendants Misrepresented Plaintiff’s Right to Obtain the Name and Address of the Original Creditor, If it Is Different than the Current Creditor, in Violation of 15 U.S.C. §§ 1692e and 1692e(10).
- G. This Court should award Plaintiff the maximum statutory damage amount of \$1,000 under the FDCPA.
- H. Plaintiff Has a Statutory Right to Attorney’s Fees and Costs.

## VI. STATEMENT OF QUESTIONS PRESENTED

Have Defendants violated the Fair Debt Collection Practices Act? If so, what is the amount of statutory damages that should be awarded to Plaintiff?

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<sup>25</sup> *Anderson*, 477 U.S. at 248

<sup>26</sup> *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986).

<sup>27</sup> *Id.*, at 323-324.

## VII. ARGUMENT

### A. THE “LEAST SOPHISTICATED CONSUMER” STANDARD IS USED TO ANALYZE VIOLATIONS OF THE FDCPA

The FDCPA states that its purpose, in part, is “to eliminate abusive debt collection practices by debt collectors.”<sup>28</sup> The statute is designed to protect consumers from unscrupulous collectors, whether or not there is a valid debt.<sup>29</sup> The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt.<sup>30</sup> The FDCPA also requires the debt collector to provide the consumer with a notice of his or her validation rights.<sup>31</sup>

The United States Court of Appeals for the Ninth Circuit has held that whether a communication or other conduct violates the FDCPA is to be determined by analyzing it from the perspective of the “least sophisticated consumer.”<sup>32</sup> The “least sophisticated consumer” standard is objective—not subjective.<sup>33</sup> Courts determine whether the “least sophisticated consumer” would be misled or deceived by the statements made in a collection letter as a matter of law.<sup>34</sup>

“The basic purpose of the least sophisticated consumer standard is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd.”<sup>35</sup> “While protecting naive consumers, the standard also prevents liability for bizarre or idiosyncratic interpretations of collection notices

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<sup>28</sup> 15 U.S.C. § 1692(e).

<sup>29</sup> *Baker v. G.C. Services*, 677 F.2d 775, 777 (9<sup>th</sup> Cir. 1982).

<sup>30</sup> 15 U.S.C. §§ 1692d, 1692e, and 1692f.

<sup>31</sup> 15 U.S.C. § 1692g.

<sup>32</sup> *Swanson v. Southern Oregon Credit Serv.*, 869 F.2d 1222, 1225 (9<sup>th</sup> Cir. 1988); *Wade v. Regional Credit Ass’n*, 87 F.3d 1098, 1100 (9<sup>th</sup> Cir. 1996).

<sup>33</sup> *Swanson*, 869 F.2d at 1227.

<sup>34</sup> *Wade*, 87 F.3d at 1100; *Terran v. Kaplan*, 109 F.3d 1428, 1432 (9<sup>th</sup> Cir. 1997); *Swanson*, 896 F.2d at 1225-26.

<sup>35</sup> *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2<sup>nd</sup> Cir. 1993).

1 by preserving a quotient of reasonableness and presuming a basic level of understanding and  
2 willingness to read with care.”<sup>36</sup>

3 “As the FDCPA is a strict liability statute, proof of one violation is sufficient to support  
4 summary judgment for the plaintiff.”<sup>37</sup> “Because the Act imposes strict liability, a consumer need  
5 not show intentional conduct by the debt collector to be entitled to damages.”<sup>38</sup> Furthermore, the  
6 question of whether the consumer owes the alleged debt has no bearing on a suit brought pursuant  
7 to the FDCPA.<sup>39</sup>

8 It is important to note that by protecting consumers from abusive, deceptive and unfair  
9 collection practices, the FDCPA insures that those debt collectors who refrain from using abusive  
10 debt collection practices are not competitively disadvantaged.<sup>40</sup> Moreover, the FDCPA further  
11 insures that regardless of whether a consumer owes a debt, he or she will be treated in a reasonable  
12 and civil manner.<sup>41</sup>

13 Accordingly, Plaintiff asserts that whether or not Defendants violated the FDCPA must be  
14 evaluated from the standpoint of the “least sophisticated consumer.”

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18 <sup>36</sup> *U.S. v. Nat’l Fin. Servs.*, 98 F.3d 131, 136 (4<sup>th</sup> Cir. 1996) (citations omitted); *see also*  
19 *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2<sup>nd</sup> Cir. 1996); *Bentley v. Great Lakes Collection Bureau*, 6  
20 F.3d 60 (2<sup>nd</sup> Cir. 1993); *Jeter v. Credit Bureau*, 760 F.2d 1168 (11<sup>th</sup> Cir. 1985); *Graziano v.*  
21 *Harrison*, 950 F.2d 107, 111 (3<sup>rd</sup> Cir. 1991); *Avila v. Rubin*, 84 F.3d 222, 226-27 (7<sup>th</sup> Cir. 1996)  
22 (“the standard is low, close to the bottom of the sophistication meter”).

23 <sup>37</sup> *Cacace v. Lucas*, 775 F. Supp. 502, 505 (D. Conn. 1990); *see also Stojanovski v. Strobl*  
24 *& Manoogian, P.C.*, 783 F. Supp. 319, 323 (E.D. Mich. 1992); *Riveria v. MAB Collections*, 682 F.  
25 Supp. 174, 178-9 (W.D.N.Y. 1988).

26 <sup>38</sup> *Russell*, 74 F.3d at 33; *see also Taylor v. Perrin Landry, deLaunay & Durand*, 103 F.3d  
27 1232, 1236 (5<sup>th</sup> Cir. 1997); *Bentley*, 6 F.3d at 62; *Clomon*, 988 F.2d at 1318.

28 <sup>39</sup> *McCartney v. First City Bank*, 970 F.2d 45 (5<sup>th</sup> Cir. 1992); *Baker*, 677 F.2d at 777.

<sup>40</sup> 15 U.S.C. § 1692(e).

<sup>41</sup> *Baker*, 677 F.2d at 777.

**B. UNDER THE STRICT LIABILITY STANDARD OF THE FDCPA, PLAINTIFF HAS PLED NUMEROUS VIOLATIONS OF THE ACT, AS SEEN FROM THE PERSPECTIVE OF THE “LEAST SOPHISTICATED CONSUMER”**

To establish a violation of the FDCPA, one need only show that: (1) Plaintiff is a consumer, (2) Plaintiff has been the object of collection activity arising from a consumer debt, (3) Defendant collecting the “debt” is a “debt collector” as defined in the Act, and (4) Defendant has engaged in any act or omission in violation of the prohibitions or requirements of the Act.<sup>42</sup> Plaintiff has pleaded and Defendants have admitted that: (1) Plaintiff is a consumer, (2) Defendants are debt collectors, and (3) Defendants were attempting to collect a consumer debt. The remainder of this memorandum will show that the last element is also satisfied as a matter of law.

Because the FDCPA is a strict liability statute, proof of one violation is sufficient to defeat a motion to dismiss and support summary judgment for a Plaintiff.<sup>43</sup> In light of this strict liability standard, a consumer need not show intentional conduct by the debt collector in order to be entitled to damages,<sup>44</sup> and there are no unimportant violations.<sup>45</sup> Further, no proof of deception or actual damages is required to obtain statutory remedies.<sup>46</sup>

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<sup>42</sup> *Turner v. Cook*, 362 F.3d 1219, 1227-1228 (9<sup>th</sup> Cir. 2004); *Romine v. Diversified Collection Servs.*, 155 F.3d 1142, 1145 (9<sup>th</sup> Cir. 1998); *De Coito v. Unifund Corp.*, 2004 U.S. Dist. LEXIS 23729 at \*8 (D. HI January 4, 2004); *United States v. Trans Continental Affiliates*, 1997 U.S. Dist. LEXIS 388 at \*8 (N.D. Cal. January 8, 1997).

<sup>43</sup> *See Hartman v. Meridian Financial Services, Inc.*, 191 F. Supp. 2d 1031, 1046-47 (W.D. Wis. 2002) (“One false or misleading statement in a collection letter renders the entire communication false or misleading and constitutes one violation”); *See also Cacace*, 775 F. Supp. at 505; *Traverso v. Sharinn*, 1989 U.S. Dist. LEXIS 19100, \*4 (D. Conn. Sept. 15, 1989); *Picht v. Jon R. Hawks, Ltd.*, 236 F.3d 446, 451 (8<sup>th</sup> Cir. 2001); *Bentley*, 6 F.3d at 62.

<sup>44</sup> *See Pittman v. J.J. Mac Intyre Co. of Nevada, Inc.*, 969 F. Supp. 609, 613 (D. Nev. 1997). *See also Russell*, 74 F.3d at 36 (“Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.”).

<sup>45</sup> *Bentley*, 6 F.3d at 63 (no non-actionable violations of FDCPA); *Taylor*, 103 F.3d at 1234 (failure “to comply with any provision of the FDCPA” leads to liability).

<sup>46</sup> *Baker*, 677 F.2d at 780.

1 **C. DEFENDANTS' DEBT COLLECTION LETTER VIOLATES 15 U.S.C. § 1692g(a)(4)**

2 15 U.S.C. § 1692g(a) sets forth requirements that a debt collector must comply with when  
3 providing notice of a debt to a consumer. These requirements state:

4 (a) Notice of debt; contents. Within five days after the initial communication with  
5 a consumer in connection with the collection of any debt, a debt collector shall,  
6 unless the following information is contained in the initial communication or the  
7 consumer has paid the debt, send the consumer a written notice containing--

8 (1) the amount of the debt;

9 (2) the name of the creditor to whom the debt is owed;

10 (3) a statement that unless the consumer, within thirty days after receipt of  
11 the notice, disputes the validity of the debt, or any portion thereof, the debt  
12 will be assumed to be valid by the debt collector;

13 (4) a statement that if the consumer notifies the debt collector in writing  
14 within the thirty-day period that the debt, or any portion thereof, is disputed,  
15 the debt collector will obtain verification of the debt or a copy of a judgment  
16 against the consumer and a copy of such verification or judgment will be  
17 mailed to the consumer by the debt collector; and

18 (5) a statement that, upon the consumer's written request within the  
19 thirty-day period, the debt collector will provide the consumer with the name  
20 and address of the original creditor, if different from the current creditor.<sup>47</sup>

21 Defendants' initial collection letter to Plaintiff reads in relevant part as follows:

22 Unless you notify us within THIRTY (30) days after receiving this notice that you  
23 dispute the validity of this debt or any portion thereof, this office will assume this  
24 debt is valid. If you notify this office within THIRTY (30) days from receiving this  
25 notice, this office will: obtain verification of the debt or obtain a copy of a judgment  
26 and mail you a copy of such judgment or verification. If you request this office  
27 within THIRTY (30) days after receiving this notice, this office will provide you  
28 with the name and address of the original creditor, if different from the current  
creditor.

21 The second sentence above appears intended to provide the notice required by 15 U.S.C. §  
22 1692g(a)(4), however, it fails for two reasons. First, this sentence fails to inform the consumer that  
23 they must dispute the debt *in writing* to preserve her right to receive verification of the debt.  
24 Second, the sentence fails to notify the consumer that any portion of the debt can be disputed to  
25 trigger the right to receive a verification.

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28 <sup>47</sup> 15 U.S.C. § 1692g(a).

As to the first violation, the court in *McCabe v. Crawford & Company*,<sup>48</sup> found a violation of § 1692g(a)(4) in a collection letter that read in relevant part:

Unless we hear from you within thirty (30) days after the receipt of this letter disputing this claim, Federal Law provides that this debt will be assumed to be valid and owing. In the event you contact us and dispute the charges owed, we will promptly furnish you with any and all documentation to substantiate the claim.

The court held that:

Section 1692g(a) dictates that the debt collector shall send the consumer a written notice stating that upon *written* notification of a dispute, verification *must* be provided by the debt collector. 15 U.S.C. § 1692g(a)(4). [Debt collector] correctly asserts that § 1692g(a)(4) does not expressly prevent the debt collector from providing verification of the debt upon *oral* notification of the dispute. However, [debt collector] misses the point of the protection found in § 1692g(a)(4). Although a debt collector *may* provide verification upon *oral* notification, the debt collector *must* provide verification upon *written* notification. If the debtor gives only *oral* notification of the dispute, the FDCPA imposes no requirement on the debt collector to obtain verification of the debt. See *Fasten v. Zager*, 49 F. Supp. 2d 144, 149 (E.D.N.Y. 1999) (holding that the debt collector was not required to obtain verification upon oral notification of the dispute). Thus, by omitting the words “in writing,” [debt collector] did not effectively convey to the consumer his rights under the FDCPA and thus violated the Act.<sup>49</sup>

As to the second violation, the Ninth Circuit in *Baker v. G.C. Servs. Corp.*,<sup>50</sup> found a violation of § 1692g(a)(4) in a collection letter that read in relevant part:

Verification of this debt, a copy of judgment or the name and address of the original creditor, if different from the current creditor, will be provided if requested in writing within 30 days. Otherwise, the debt will be assumed to be valid.<sup>51</sup>

The court held that:

The clear language of the statute explicitly requires that a debtor shall be given notice that he may “dispute the validity of the debt, or any portion thereof . . .” 15 U.S.C. § 1692g(a)(3). “In construing a statute we are obliged to give effect, if possible, to every word Congress used.” *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339, 99 S. Ct. 2326, 2331, 60 L. Ed. 2d 931 (1979). Congress clearly required the

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<sup>48</sup> 272 F. Supp. 2d 736 (N.D. Ill. 2003).

<sup>49</sup> *Id.* at 738 (emphasis in original); *see also Bankston v. Phycom Corp.*, 2007 U.S. Dist. LEXIS 89284 (N.D. Cal. November 19, 2007) (J. Fogel); *Kreek v. Phycom Corporation*, 2007 U.S. Dist. LEXIS 30652 at \*7-8 (N.D. Cal. April 26, 2007) (J. Ware); *Chan v. North American Collectors, Inc.*, 2006 U.S. Dist. LEXIS 13353 at \*13-20 (N.D. Cal. March 24, 2006) (J. Larson).

<sup>50</sup> 677 F.2d 775.

<sup>51</sup> *Id.* at 778.



notice to inform the debtor that he could dispute any portion of the debt.<sup>52</sup>

Because Defendants' initial collection letter contains two separate violations of 15 U.S.C. § 1692g(a)(4), Plaintiff should be granted summary judgment on this issue.

**D. DEFENDANTS' DEBT COLLECTION LETTER VIOLATES 15 U.S.C. §1692g(a)(5)**

As stated above, §1692(g)(a)(5) states that the debt collector must send the consumer a written notice containing:

a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

Defendants' initial collection letter to Plaintiff reads in relevant part as follows:

Unless you notify us within THIRTY (30) days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office within THIRTY (30) days from receiving this notice, this office will: obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office within THIRTY (30) days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor<sup>53</sup>.

The last sentence in this paragraph appears intended to provide the notice required by 15 U.S.C. § 1692g(a)(5). However, it fails because it does not inform the consumer that they must make the request in writing. In *Camacho v. Bridgeport Financial Inc.*, the Ninth Circuit Court of Appeals recently held that "[t]he plain meaning of § 1692g is that debtors can trigger the rights . . . under subsections (a)(4) and (a)(5) only through written dispute."<sup>54</sup> Therefore, by omitting the words "in writing," Defendants did not effectively convey to Plaintiff her rights under the FDCPA and thus violated the Act. Because of Defendants' clear violation of § 1692g(a)(5), Plaintiff should be granted summary judgment on this issue.

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<sup>52</sup> *Id.*

<sup>53</sup> Plaintiff's Declaration, Exhibit "1."

<sup>54</sup> *Camacho v. Bridgeport Fin., Inc.*, 430 F.3d 1078, 1081 (9<sup>th</sup> Cir. 2005)



**E. DEFENDANTS MISREPRESENTED PLAINTIFF'S RIGHT TO OBTAIN A COPY OF THE DEBT VERIFICATION OR JUDGMENT AGAINST HER, IN VIOLATION OF 15 U.S.C. §§ 1692e AND 1692e(10)**

15 U.S.C. § 1692e provides as follows:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

As explained above, the June 4, 2007 collection letter from Defendants misrepresented Plaintiff's right to request verification of the debt being collected, or any portion thereof. Defendants' debt collection letter did not inform Plaintiff that she was required by the FDCPA to request validation of the debt *in writing* to preserve her rights under the Act. This omission from the required disclosures misrepresented Plaintiff's right to obtain a copy of the debt verification, and thus violated 15 U.S.C. §§ 1692e and 1692e(10).

**F. DEFENDANTS MISREPRESENTED PLAINTIFF'S RIGHT TO OBTAIN THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR, IF IT IS DIFFERENT THAN THE CURRENT CREDITOR, IN VIOLATION OF 15 U.S.C. §§ 1692e AND 1692e(10)**

As shown above, Defendants' debt collection letter Defendants misrepresented Plaintiff's right to request the name and address of the original creditor, is different from the current creditor. Defendants' debt collection letter did not inform Plaintiff that she was required by the FDCPA to request this information *in writing* to preserve her rights under the Act. This omission from the required disclosures misrepresented Plaintiff's right to obtain the name and address of the original creditor, and thus violated 15 U.S.C. §§ 1692e and 1692e(10).

**G. THIS COURT SHOULD AWARD PLAINTIFF THE MAXIMUM STATUTORY DAMAGE AMOUNT OF \$1,000 UNDER THE FDCPA**

The maximum statutory damage award available under the Federal FDCPA is a modest \$1,000. Courts have therefore awarded the maximum amount even when the violations found were

less numerous and egregious than those herein. For example, in *Riviera v. M.A.B.*,<sup>55</sup> the court awarded the maximum \$1,000 because the validation notice appeared on the back of the letter, in relatively small print, with no reference to it on the front of the letter. Thus, even though the notice was accurate, the court determined a \$1,000 award was appropriate. Here the notice is inaccurate in at least four (4) respects. Furthermore, in *Tolentino v. Friedman*,<sup>56</sup> the Seventh Circuit upheld the maximum statutory award of \$1,000 despite finding that only one provision of the FDCPA had been proven. In that case the debt collector had included a disclosure required 15 U.S.C. § 1692e(11) in its initial notice, but had failed to include it in a subsequent notice. The present case involves at least 4 violations of the federal FDCPA. Thus, the violations herein are more numerous and meaningful than in those cases, and therefore the Court should award the maximum amount of statutory damages under 15 U.S.C. § 1692k(a)(2)(A), which is \$1,000.

#### **H. PLAINTIFF HAS A STATUTORY RIGHT TO ATTORNEY'S FEES AND COSTS**

The federal FDCPA directs a court to award attorney's fees to a prevailing consumer.<sup>57</sup> A number of cases decided under 15 U.S.C. § 1692k have held that an award of attorney fees and costs is required if the plaintiff prevails.<sup>58</sup> The Court should award the Plaintiff her reasonable attorney fees and costs incurred in this matter.

### **VIII. CONCLUSION**

For the reasons set forth above, the Plaintiff, as a matter of law, is entitled to summary

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<sup>55</sup> 682 F. Supp. 174 (W.D.N.Y. 1988).

<sup>56</sup> 46 F.3d 645 (7<sup>th</sup> Cir. 1995).

<sup>57</sup> 15 U.S.C. § 1692k(a)(3).

<sup>58</sup> See, e.g. *Zagorski v. Midwest Billing Services, Inc.*, 178 F.3d 116 (7<sup>th</sup> Cir. 1997) (holding it was an abuse of discretion not to award attorney's fees following a stipulated judgment in the amount of \$100; and directing the court to award fees sufficient to compensate the attorney for the time spent on the case in order to encourage enforcement of the FDCPA); *Pipiles v. Credit Bureau, Inc.*, 886 F.2d 22 (2<sup>nd</sup> Cir. 1989) (directing trial court to award fees on remand despite the lack of actual or statutory damages because Plaintiff had demonstrated that Defendant violated the FDCPA); *Perez v. Perkiss*, 742 F.Supp. 883 (D.Del. 1990) (awarding Plaintiffs' legal services attorneys \$10,110 after a half-day jury trial in which Plaintiff was awarded \$1,200 in damages).

1 judgment: 1) declaring that Defendants' collection letter (Exhibit "1") violates the Fair Debt  
2 Collection Practices Act, 15 U.S.C. §§ 1692e and 1692e(10), 1692g(a)(4) and 1692g(a)(5); 2)  
3 awarding Plaintiff statutory damages in an amount not exceeding \$1,000 pursuant to 15 U.S.C. §  
4 1692k(a)(2)(A); 3) awarding Plaintiff the costs of this action and reasonable attorneys fees pursuant  
5 to 15 U.S.C. § 1692k(a)(3); and 4) awarding Plaintiff such other and further relief as may be just  
6 and proper.

7 CONSUMER LAW CENTER, INC.

8  
9 By: /s/ Fred W. Schwinn  
Fred W. Schwinn, Esq.  
10 Attorney for Plaintiff  
PATRICIA CLAIRE BANKSTON  
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